



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent sent by registered mail on January 27, 2009. The landlord also sought a Monetary Order for the unpaid rent, loss of rent and filing fee for this proceeding. In addition, I exercised my discretion under section 64(3)(c) of the *Act* and permitted the landlord to amend the application to request authorization to retain the security deposit in set off against the balance owed.

At the commencement of the hearing, the landlord gave evidence that she had been advised by neighbours that the tenants had vacated on or about February 28, 2009 although they had not given notice or provided a forwarding address. The landlord asked that an Order of Possession still be considered in order to secure her right to occupy the rental unit to ready it for new tenants.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and the effective date, and a Monetary Order, the amount, and whether the landlord may retain the security deposit in set off.

Background and Evidence

This tenancy began February 1, 2008. Rent was \$990 per month and the landlord holds a security deposit of \$495 paid on January 31, 2008.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was served when the tenants' rent cheque for January had been returned as NSF. In the interim, the tenants did not pay the rent for February 2009. As the tenants left without giving notice and advised the landlord on February 19, 2009 that they were not moving, the landlord seeks loss of rent for March as well as rent for January and February, \$25 late fees for each month and a \$25 NSF fee for January as per the rental agreement.

As the tenancy had ended, I cannot include a late fee with the loss of rent award for March 2009.

Analysis

Section 46 of the *Act* which deals with notice to end tenancy for unpaid rent provides that a tenant may pay the overdue rent or make application for dispute resolution within five days of receiving the notice. If the tenant does neither, they are presumed to have accepted that the tenancy ends on the date stated on the notice. In this matter, the tenants have not paid the rent and have not made application to dispute the notice.

Therefore, the landlord requested, and I find she is entitled to, an Order of Possession effective at 1 p.m. on March 12, 2009. I further find that the landlord is entitled to a Monetary Order for the unpaid rent, late fees, NSF fee and filing fee for this proceeding and authorization to retain the security deposit in set off as follows:

January rent plus \$25 late fee plus \$25 NSF fee	\$1,040.00
February rent plus \$25 late fee	1,015.00
March loss of rent	990.00
Filing fee	50.00
Sub total	\$3,095.00
Less retained security deposit	- 495.00
Less interest (Jan. 31, 2008 to date)	- 6.82
TOTAL	\$2,593.18

Conclusion

Thus, the landlord's copy of this decision is accompanied by an Order of Possession effective at 1 p.m. on March 12, 2009 and a Monetary Order for \$2,593.18.

The Order of Possession is enforceable through the Supreme Court of British Columbia and the Monetary Order is enforceable through the Provincial Court of British Columbia,,

March 11, 2009

Dispute Resolution Officer